

REMARKS

Claims 1-25 are currently pending.

The claimed invention combines a particular surfactant system (one which contains a phosphate surfactant and a foaming nonionic surfactant but which, in claims 1-24, does not contain amphoteric surfactant [that is, no amphoteric surfactant is present or there is so little amphoteric surfactant present that it does not materially affect the claimed surfactant system]) and a particular polymer (a cationic polymer devoid of saccharide groups). This combination of elements yields cleansing compositions which have good rinsability and which have a voluminous foam having small bubbles which is soft and dense.

As demonstrated in the Rule 132 declaration submitted April 25, 2002, changing the cationic polymer from one which lacks a saccharide group to one which contains a saccharide group negatively affects the rinsability and viscosity of the composition. The importance of preparing a composition with a cationic polymer devoid of saccharide groups is further shown in the data submitted in the attached Rule 132 Declaration.¹

Moreover, as demonstrated in the Rule 132 declaration December 8, 2003, changing the surfactant system from one which contains a phosphate surfactant to one which lacks a phosphate surfactant negatively affects bubble size and foam density of the composition. Only when the claimed surfactant system and the cationic polymer are combined are the benefits associated with the claimed compositions realized. As such, the claimed invention represents a novel, non-obvious advance in the art deserving of patent protection.

¹ Note that in the Declaration the term "M.A." means active material ("Material Active").

The Examiner has continued to reject the claims as obvious under 35 U.S.C. §103 over U.S. patent 6,090,773 ("Lukenbach") in view of U.S. patent 6,262,130 ("Derian"). This rejection is untenable for the following reasons.

Lukenbach teaches that several cationic polymers can be used in his compositions. For example, Lukenbach states that polyquaternium-7 (col. 11, line 64), cellulose derivative polyquaternium-10 (col. 11, line 35) and cationic guar derivatives (col. 11, line 39) can be used. Significantly, Lukenbach neither teaches nor suggests that using polymers lacking saccharide groups such as polyquaternium-7 would yield better compositions than using any of the other disclosed cationic polymers. Similarly, Lukenbach teaches that several anionic surfactants such as, for example, alkyl sulfates, alkyl ether sulfates, alkyl monoglyceryl ether sulfates, etc. (see, cols. 8-10) can be used. Also significantly, Lukenbach neither teaches nor suggests that using a phosphate surfactant would yield better compositions than using any of the other disclosed surfactants.

Lukenbach gives no weight to selecting particular cationic polymers or phosphate surfactant and therefore all of the polymers and surfactants described by Lukenbach would be equivalent, i.e., expected to yield the same or essentially the same properties. In fact, the Examiner has also concluded that the polymers in Lukenbach would be equivalent (see page 3 of the Official Action mailed June 3, 2003).

However, contrary to the equivalency of the various polymers and surfactants described by Lukenbach, Applicants have demonstrated that the specific cationic polymer used and the specific anionic surfactant used are important.

The Examiner in her rebuttal remarks on page 6 of the Official Action mailed January 28, 2004 states that the Applicants have not addressed the criticality of the particular cationic polymers used in the present invention. However, the Examiner is incorrect.

Applicants have already provided data unquestionably demonstrating the criticality of the cationic polymer used in the Rule 132 Declaration filed in April 2002. To insure that the Examiner is aware of significant data which has been and is being made of record in this case, a brief description of those data and their relevance to the claimed invention are discussed below.

DATA DEMONSTRATING CRITICALITY OF THE CATIONIC POLYMER

As demonstrated in the April 25, 2002, Rule 132 declaration submitted in this case, changing the cationic polymer from one which lacks a saccharide group to one which contains a saccharide group negatively affects the rinsability and viscosity of the composition (see also, page 4, lines 16-23 of the present application which indicate that cationic polymers having saccharide groups have poor rinsability characteristics and leave undesirable films on the skin). Further, these data are supported by the additional data presented in the attached Rule 132 Declaration which again demonstrate that other cationic polymers devoid of saccharide groups, i.e., polyquaternium 47, also exhibited better sensory qualities relative to one which does not contain such a polymer.

DATA DEMONSTRATING THE CRITICALITY OF THE PHOSPHATE SURFACTANT

As demonstrated in the December 8, 2003, Rule 132 declaration, changing the surfactant system from one which contains a phosphate surfactant to one which lacks a phosphate surfactant negatively affects bubble size and foam density of the composition. Specifically, the Rule 132 declaration compares example 1 of the present application with a comparative example which is identical to example 1 except that it contained 6.5% sodium lauryl ether sulfate (TEXAPON AOS 225 UP® from Cognis) instead of 6.5% lauryl phosphate. Thus, the comparative example did not contain a phosphate surfactant, whereas example 1 did.

These data demonstrate the improved sensory qualities of a composition formulated with a phosphate surfactant relative to some other surfactant described in Lukenbach.

Thus, contrary to Lukenbach's teachings, the specific cationic polymer used and the specific anionic surfactant used are important. Accordingly, Lukenbach completely fails to teach, suggest or recognize the significance of the claimed invention. Derian, which is cited solely for its disclosure of specific alkyl phosphate surfactants, does not compensate for Lukenbach's deficiencies. Therefore, the combination of the two cited publications do not provide the requisite motivation to select a particular polymer and a particular surfactant from the numerous possible combinations from these references.

Moreover, claims 1-24 are free of the cited art for another reason as well. Lukenbach requires the presence of an amphoteric surfactant. No suggestion or motivation exists to modify Lukenbach in such a way as to eliminate an essential element from Lukenbach's compositions. Thus, no motivation or suggestion exists for one skilled in the art to obtain the invention of claims 1-24.

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Furthermore, in addition, the Declarant in the attached submission who is an engineer and who has experience in the field of preparing and analyzing cosmetic and/or dermatological compositions concludes that based on the equivalency of the ingredients which flows from the description of Lukenbach and Derian:

I conclude that the data which shows that a cationic polymer devoid of saccharide groups having improved sensory qualities even more surprising and unexpected.

The Examiner has disregarded such conclusions from previous Declarants and herself concludes that the results would have been expected (for example, see the conclusions set forth on page 6 of the Official Action of January 28, 2004). However, these conclusions are unsubstantiated by the evidence of record. Where is the basis for such conclusions?

There is no basis in the cited art of record, because as it logically flows from the description of the cited art that the polymers and surfactants described are equivalent. In fact, Applicants remind the Examiner of her own conclusions that the art teaches that the types of polymers and surfactants are equivalent (see page 3 of the Official Action mailed June 3, 2003). To the contrary, data have been presented which demonstrate the criticality of selecting particular types of polymers and phosphate surfactants yields surprising and unexpected results.

In view of the foregoing, the rejection under 35 U.S.C. § 103 is not tenable and therefore should be withdrawn.

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The presently pending claims are believed to be in condition for allowance.

Accordingly, the Examiner is respectfully requested to pass this application to issue.

Respectfully submitted,

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